

REMARKS

The Amendments

The claims are amended only in a non-substantive clarifying nature. The amendments do not narrow the scope of the claims and/or were not made for reasons related to patentability. The amendments should not be interpreted as acquiescence to any objection or rejection made in this application.

Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

The Provisional Obviousness-type Double Patenting Rejections

The provisional rejections of claims 1, 3-11 and 14-19 for obviousness-type double patenting rejections over copending application Ser. Nos. 10/581,495 and 10/527,980 are respectfully traversed.

The rejection over copending Application Ser. No. 10/581,495 appears to be clearly in error since this application is not owned by applicants and relates to completely different subject matter, i.e., a vaccine virus. The instant claims are clearly not obvious variants of the copending claims. Thus, the provisional rejection should be withdrawn at least for this reason.

Further, the provisional rejections over both of the copending applications should be withdrawn because the current application is earlier-filed in relation to both of the cited copending applications. In accordance with M.P.E.P. §804(I)(B)(1), “If a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection

remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.” Thus, both provisional rejections should be withdrawn for this additional reason.

The Rejections under 35 U.S.C. §102/103

The rejections of claims 1, 3-11 and 14-19 are rejected under 35 U.S.C. §102 as anticipated or under 35 U.S.C. §103 as being obvious over Schauer (U.S. Patent No. 6,686,046) or Glausch (U.S. Patent No. 6,176,918) are respectfully traversed.

The Office action provides no explanation of the basis for the rejection. The text of the rejection merely refers applicants to, essentially, the whole disclosure of each reference and fails to point out how either reference discloses or renders obvious each element of the claimed invention. See, KSR International Co. v. Teleflex Inc., 550 U.S. __, 82 USPQ2d 1385, at 1396 (2007), stating: “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” Applicants urge there is no articulated reasoning or rational underpinning to support the legal conclusion of obviousness. Further, in order to support anticipation, “[e]very element of the claim must be literally present, arranged as in the claim,” see, e.g., Richardson v. Suzuki Motor Co., 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The Office action provides no explanation of how either reference discloses an embodiment meeting each element of the claimed invention. For the above reasons, at least, it is urged that the rejections under 35 U.S.C. §102 and under 35 U.S.C. §103 are not supported by the Office action and should be withdrawn.

Additionally, the basis for the rejections is not apparent from a reading of either of the

references. Neither of the references discloses an embodiment of particles comprising “UV protection agents or UV stabilisers,” particularly wherein the sheathing polymer on the inorganic particles “comprises or includes the one or more UV protection agents or UV stabilisers;” see, e.g., claim 1. Furthermore, neither of the references appear to provide any disclosure of particles which have the property to “reflect or absorb light having wavelengths of from 290 to 500 nm,” see claim 1. Also, there is no discussion at all or disclosure apparent from the references for meeting the rejected dependent claim embodiments.

Regarding the claim recitation that the polymer is an “immobilisable polymer or polymer mixture,” the Office action alleges that this recitation is not of patentable significance because “it only states a possibility.” Applicants respectfully disagree. The term immobilisable recites a property of the polymer. Such a property is a positive claim element and must be considered in the examination. For example, the term “water-soluble” recites a property. It is only relevant when the item in question is in the presence of water, so in that sense it is also “only a possibility” but it is just as clearly a positive property recitation which must be considered when determining patentability.

For all the above reasons, it is urged that neither of Schauer (U.S. Patent No. 6,686,046) or Glausch (U.S. Patent No. 6,176,918) anticipate or render the claimed invention obvious to one of ordinary skill in the art. Thus, the rejections under 35 U.S.C. §102 and 35 U.S.C. §103 should be withdrawn.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

The Commissioner is hereby authorized to charge any additional fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

/John A. Sopp/
John A. Sopp, Reg. No. 33,103
Attorney for Applicant(s)

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410
Attorney Docket No.: MERCK-2969

Date: January 26, 2009

JAS/sb